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Child Welfare Managed Care in Florida: Will It Be Innovation or Abdication?

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I. INTRODUCTION

Election ballots and international custody battles aside, all eyes are on Florida for yet another reason: Florida's steady push to privatize the operation of its social services programs. Part of Governor Jeb Bush's plan to trim the government payroll by transferring state functions to private community groups, including faith-based organizations, privatization in Florida has hit industries ranging from nursing homes for veterans to the child welfare system.¹

Privatization is also known as "managed care" and resembles managed care in the health care setting.² Both terms refer to the use of a variety of approaches intended to balance the cost of services with quality and customer access by reconciling the provision of care to each individual with the resources available to serve an entire pool of customers. "Cost effectiveness is achieved by efficiently delivering the most appropriate services to

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1. See Steve Bousquet, *Veterans Blast Bush Plan to Privatize*, MIAMI HERALD (Broward), Jan. 29, 2001, at 1A; Steve Bousquet, *Faith-Based Initiative Familiar to Florida*, MIAMI HERALD (Broward), Jan. 30, 2001, at 1A.

2. Florida calls this movement "community-based care." See FLA. DEP'T OF CHILDREN & FAMILIES, COMMUNITY-BASED CARE END OF YEAR REPORT 2, available at http://www.dcf.state.fl.us/cf_web/mspt (Dec. 2000) [hereinafter REPORT].

each individual served.”³ The following strategies are typically used by managed care systems to balance cost, quality, and access: pre-authorized care; gatekeeping and utilization review; use of standardized practice guidelines; management of data through information technology; built-in financial risks and incentives; and outcome-based contracting.⁴

While Florida is unique in the breadth and scope of its privatization movement, many other states are experimenting with the transfer of pieces of state government functions to private organizations, particularly in the area of child welfare services.⁵ By 1999, twenty-nine states had one or more initiatives to change their management, financing, or child welfare service delivery practices by adopting one or more principles of managed care.⁶ There are two basic elements to managed care arrangements in child welfare: fixed or capitated prospective payments to at least one service provider, rather than traditional fee-for-service reimbursement payments; a single private entity responsible for providing appropriate and quality services.⁷

The majority of the twenty-nine states that operate child welfare “managed care” initiatives are experimenting with the delivery of services to emotionally disturbed children, only one segment of the child welfare population. In some states, certain counties, most notably Jefferson and Mesa Counties in Colorado, serve all children in foster care in privatized systems.⁸ Kansas was the first state to develop a statewide system of managed care for all of its child welfare services.⁹ Now Florida has joined Kansas in this endeavor.

3. CHILD WELFARE LEAGUE OF AM., MANAGED CARE INSTITUTE 1, *available at* <http://www.cwla.org/programs/managedcare> (last visited Mar. 10, 2001).

4. *Id.*

5. Cynthia M. Fagnoni, *Child Welfare: New Financing and Service Strategies Hold Promise, but Effects Unknown*, Statement Before the Subcommittee on Human Resources, Comm. on Ways and Means, House of Representatives (July 20, 2000), in U.S. GEN. ACCT. OFFICE (GAO), GAO/T-HEHS-00-158 (2000) [hereinafter GAO Statement]. For purposes of this article, “child welfare” or “child welfare system” will refer to the full range of functions and services operated to protect Florida’s abused, neglected or dependent children, including protective investigations, early intervention services, family preservation and support services, shelter care, foster care, therapeutic foster care, group care, residential care, independent living, postadjudication case management, postplacement supervision, permanent foster care, and adoption.

6. *Id.* at 3.

7. *Id.*

8. *See generally* Patricia Callahan & Kirk Mitchell, *Foster Care Too Often Fails to Keep Kids Safe*, *available at* <http://www.denverpost.com/news/foster0521a.htm> (last visited Mar. 17, 2001).

9. GAO Statement, *supra* note 5, app., at 16.

This article will first describe the statutory characteristics of the child welfare community-based care movement in Florida, as well as the shift in statutory philosophy regarding the roles and responsibilities of Florida's state child welfare agency, the Department of Children and Families. Next, the national and state contextual drivers serving as the impetus for Florida's child welfare community-based care and the attributes of successful community-based care will be described. This will serve as background for a discussion of the following three challenges facing Florida's implementation process: adequate state funding; limitation of legal liability; and preservation of appropriate state *parens patriae* roles.

The article will conclude with recommendations designed to assure that Florida's process is effective in protecting children, rather than abdicating state responsibility and devolving state obligations upon local communities and private providers without adequate resources.

I. CHILD WELFARE COMMUNITY-BASED CARE IN FLORIDA

The Department of Children and Family Services ("DCF"), Florida's child welfare agency, began privatizing child welfare services in several Florida communities in the early 1990s by purchasing an extensive array of services from private sector providers such as the Florida Sheriff's Youth Association and the Children's Home Society. "Of Florida's \$373 million child protection budget [in 1999], \$240 million or [sixty-three] percent [was] spent on services provided by the private sector."¹⁰ Some seventy licensed child-placing agencies offered foster, group, and shelter placements, and some 104 offered only adoption services.¹¹

But in 1996, the sea change in the delivery of child welfare services in Florida began in earnest. The Florida Legislature authorized DCF to contract with competent community-based agencies for the provision of foster care and related services,¹² and to establish five model community-based pilot programs, one of which had to be operated by a for-profit corporation.¹³

10. THE FLORIDA LEGISLATURE, COMMITTEE ON CHILDREN & FAMILIES, SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT, CS/SB 660, at 1 (1999).

11. Susan Vivian Mangold, *Protection, Privatization, and Profit in the Foster Care System*, 60 OHIO ST. L.J. 1295, 1313 n.81 (1999).

12. These services are to include: "family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, intensive residential treatment, . . . postadjudication case management, postplacement supervision, permanent foster care, family reunification, the filing of a petition for the termination of parental rights, and adoption." FLA. STAT. § 409.1671(1) (Supp. 1996).

13. § 409.1671(1), (5). The 1996 Personal Responsibility and Work Opportunity Act amended the Social Security Act shortly after the 1996 session of the Florida Legislature adjourned to allow federal reimbursement of costs by Title IV-E for foster care provided by

The expressed intent of the Florida Legislature in creating this community-based care model was to strengthen the support and commitment of communities for the reunification of families and to promote efficiency and increased accountability in the care of children and families.¹⁴

In 1998 the Florida Legislature expanded the concept of community-based care and directed DCF to privatize all foster care and related services statewide, phased in over a three-year period beginning on January 1, 2000.¹⁵ The legislature required DCF to prepare a plan to transfer all available funds, including federal funds, to such community-based agencies.¹⁶

The concept of an "eligible lead community-based provider," a single agency that contracts with DCF for the provision of child protective services in a community no smaller than a county, was established with the following parameters:

[t]he ability to coordinate, integrate, and manage all child protective services in the . . . community in cooperation with child protective investigations; [t]he ability to ensure continuity of care from entry to exit for all children referred [by] . . . protective investigation and court[s] . . . ; [t]he ability to provide directly, or contract for through a local network of providers, all necessary . . . services; [t]he willingness to accept accountability for meeting the outcomes and performance standards . . . established by the Legislature and the Federal Government; [t]he capability and the willingness to serve all children referred to it from the protective investigation and court systems, regardless of the level of funding allocated to the community by the state, provided all related funding is transferred; [t]he willingness to ensure that each individual who provides child protective services completes the training required¹⁷

DCF, the contracting agency, retained responsibility for the quality of contracted services and programs, for ensuring services were delivered in accordance with applicable federal and state statutes and regulations, and for

private for-profit companies. See 42 U.S.C. § 672(c) (Supp. III 1997). Some argue that "[t]he entrance of profit making into the system raises issues of accountability and oversight unique to the profit making structure of the corporations." Mangold, *supra* note 11, at 1295.

14. FLA. STAT. § 409.1671(1)(a) (Supp. 1998).

15. *Id.*

16. *Id.* The services to be privatized include the list of services authorized in 1996 minus the filing of petitions for the termination of parental rights. *Id.*

17. § 409.1671(1)(b).

establishing a quality assurance program and an annual evaluation of community-based agencies.¹⁸

Emboldened by its 1996 and 1998 legislative successes, DCF sought and obtained permission from the legislature in 1999 to suspend its statutory duties and responsibilities and to submit a comprehensive reorganization plan to achieve more effective and efficient service delivery and improve accountability.¹⁹ The Department's comprehensive plan articulated an eye-catching vision for community-based care that created local community alliances to draw together lead agencies, networks of service providers, and the department in implementing the reorganization.²⁰ The effort would begin with community-based care for child welfare services, but would incrementally expand to include all other services.²¹

According to DCF, such a bold step was necessitated by the following factors: a statutory mission too enormous to fulfill, with a span of control too broad and communications between central offices and districts often problematic; "[l]ack of true partnership with local communities; [a]bsence of local systems of care . . . characterized by a single point of intake for assessment, service planning, and care management with necessary specialized services carefully coordinated and integrated to meet the needs of . . . client[s]; [lack of uniformity in] contract management [of] over 1700 individual contracts; . . . [lack of resource coordination between the state and localities]."²²

DCF's proposed solution would be to create a responsive system of care in local communities which would produce an integrated service plan for each family and which would be accessible, individualized, family-centered, respectful, integrated, effective, efficient, normalized, and community focused.²³ Community-based care would be composed of the community, a Community Alliance serving as the focal point of community ownership and oversight of the system of care, a lead agency providing core services, and a network of local service providers.²⁴

While DCF would "continue to be responsible for the overall provision of state and federally mandated and funded services,"²⁵ the most controversial portion of the plan would require local communities to share both the

18. § 409.1671(2), (3)(a).

19. Ch. 99-219, § 1(1), 1999 Fla. Laws 1351 (to be codified at FLA. STAT. § 20.19).

20. FLA. DEP'T OF CHILDREN & FAMILIES, COMPREHENSIVE PLAN TO REORGANIZE THE DEPARTMENT OF CHILDREN & FAMILIES 8, *available at* http://www.state.fl.us/cf_web/reorg (Jan. 1, 2000) [hereinafter COMPREHENSIVE PLAN].

21. *Id.* at 7.

22. *Id.* at 5-6.

23. *Id.* at 9-10.

24. *Id.* at 11-12.

25. COMPREHENSIVE PLAN, *supra* note 20, at 19.

costs and the risks of operating the system and delivering services.²⁶ Local communities would be expected to commit increased funds and might be expected to develop local match funds in order to obtain an increment of state funding.²⁷ Risk would be shared through a case rate funding approach with a state set-aside of a risk pool.²⁸

The Florida Legislature balked at the notion of requiring local governments to share greater costs, and specifically provided in year 2000 that "the Legislature does not intend by its privatization of foster care and related services that any county, municipality, or special district be required to assist in funding programs that have previously been funded by the state."²⁹ The legislature was silent, however, with regard to expectations of private providers, although it authorized the creation of a risk pool to reduce the financial risk to eligible lead agencies resulting from unanticipated caseload growth³⁰ and agreed to establish community alliances to oversee the devolution to local communities.³¹ The legislature further put some skids on DCF's adventurous plan, limiting application of the larger plan to one prototype region and requiring demonstrated improvement in management and oversight of services or cost savings from more efficient administration before the Secretary of DCF could expand the plan to other districts.³²

Perhaps the greatest change in Florida law regarding the administration of its child welfare system is the reduced mission of the state child welfare agency and its Secretary. In 1995, the mission of the then Department of Health and Rehabilitative Services, was "to deliver, or provide for the delivery of, all health, social, and rehabilitative services offered by the state through the department to its citizens,"³³ and the duties of the department were statutorily prescribed. Most notably, they included providing assistance to individuals, preventing and remedying neglect, abuse, exploitation of children, and aiding in the preservation, rehabilitation, and reuniting of families.³⁴

26. *Id.* at 23.

27. *Id.*

28. *Id.*

29. FLA. STAT. § 409.1671(1)(a) (2000).

30. § 409.1671(7). The legislature appropriated \$4.5 million for the risk pool in 2000. REPORT, *supra* note 2, at 18.

31. § 20.19(6). The initial membership of each community alliance is a representative of county government, school district, county United Way, sheriff's office, circuit court, and children's board. *Id.* § 20.19(6)(d)(1)-(7).

32. § 20.19(7). The prototype region is the geographical area including counties in the 6th, 12th, and 13th judicial circuits. *Id.* § 20.19(5)(a)(7), (16), (17).

33. FLA. STAT. § 20.19(1)(a) (1995).

34. *Id.* Other responsibilities included but were not limited to: cooperating with other state and local agencies in integrating the delivery of all health, social, and rehabilitative

In 1996, this mission was changed, along with the name of the department. DCF was "to work in partnership with local communities to help people be self-sufficient and live in stable families and communities."³⁵ The 1996 statute, however, retained the prescribed duties of DCF.³⁶ By 2000, these defined purposes had disappeared. The mission of DCF now is "to work in partnership with local communities" to help people be self-sufficient and live in stable families and communities.³⁷ The duties of the Secretary are, simply, to assure "that the mission of the department is fulfilled in accordance with state and federal laws, rules, and regulations."³⁸ Gone are the obligations to provide assistance to individuals and to prevent or remedy neglect, abuse, and exploitation and to aid in the preservation, rehabilitation and reunification of families.

The community-based care revolution in Florida is now complete. No longer is the focus of ownership, responsibility, and service delivery. The state child welfare agency, according to state law, at best, holds shared responsibility for the protection of children with local communities and enjoys a vast diminution of duties.

II. IMPETUS FOR CHILD WELFARE COMMUNITY-BASED CARE

The motivation for community-based care comes from different sources. One driving force, certainly one prevalent in Florida, is the desire to shrink the size of state government and eliminate the need for civil service protections that make it difficult or impossible to discipline or fire incompetent employees. Community-based agencies can terminate ineffective employees at the will of the supervisor.³⁹

A stronger motivating force, however, is the desire to fix what most commentators describe as a broken child welfare system: one beset with escalating costs and a poorly integrated patchwork of services.⁴⁰ Nationally, state child welfare systems are currently responsible for more than one

services offered by the state to those in need of assistance; providing such assistance as is authorized so that clients might achieve or maintain economic self-support and self-sufficiency; preventing or reducing inappropriate institutional care, as well as functions related to health and mental health. *Id.*

35. FLA. STAT. § 20.19(1)(a) (Supp. 1996).

36. *Id.* The prescribed purposes are almost identical to the purposes contained in the 1995 statute. See FLA. STAT. § 20.19(1)(a) (1995).

37. FLA. STAT. § 20.19(1)(a) (2000).

38. § 20.19(1), (2).

39. See Bousquet, *Veterans Blast Bush Plan to Privatize*, *supra* note 1, at 6A.

40. U.S. GEN. ACCT. OFFICE (GAO), GAO/HEHS-99-8, CHILD WELFARE: EARLY EXPERIENCES IMPLEMENTING A MANAGED CARE APPROACH 2 (Oct. 1998).

million children needing protection or care.⁴¹ "Foster care is intended to provide a temporary, safe haven for children whose parents are unable to care for them," according to Michael Mushlin.⁴² Yet more than half a million children currently languish in government foster care at a cost of \$12 billion.⁴³ In the current child welfare delivery system, there are many problems. Among these problems is the lack of permanence; "children remain in foster care too long without being reunited with their parents or adopted into a permanent home."⁴⁴ Compromised safety is another issue; "children are sent back to abusive homes or placed with abusive foster parents or in overcrowded conditions."⁴⁵ There are a high number of placements; "children move from foster home to foster home within short time periods, jeopardizing their safety and stability."⁴⁶ Heavy caseloads is yet another problem; "social workers are responsible for far too many children to supervise all cases thoroughly."⁴⁷ Finally, caseworker turnover is among the problems; "foster children face many changes and have to adjust to many caseworkers."⁴⁸

In the latter half of the 1990s, the march toward foster care drift for abused and neglected children seemed almost inexorable. While

[i]n 1996, approximately 520,000 children were in foster care; by March 1999, 547,000 children were in foster care. In 1996, 11 percent had been in foster care for three to four years, and 10 percent had been there for five years or longer. By March 1999, 15 percent had been in foster care three to four years and 18 percent had been in foster care 5 years or longer. In 1996, 54,000 children were legally available for adoption;⁴⁹ by March 1999, 117,000 were legally available for adoption.⁴⁹

The average length of stay of a child in foster care in Florida in November, 2000 was 35.6 months.⁵⁰

41. *Id.* at 5.

42. Michael B. Mushlin, *Unsafe Havens: The Case for Constitutional Protection of Foster Children from Abuse and Neglect*, 23 HARV. C. R.-C.L. L. REV. 199, 204 (1988).

43. Lisa Snell, Reason Public Policy Study #271, *Child Welfare and the Role of Privatization* 6, available at <http://www.rppi.org/ps271.html> (Oct. 2000).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Snell, *supra* note 43.

49. *Id.*

50. REPORT, *supra* note 2, at 30.

Jill Chaifetz observes the incalculable human loss behind these statistics, the enormous personal pain and hurt, and the tangible, detrimental societal costs. "Children who have grown up or left foster care fill the nation's jails, mental hospitals and welfare rolls," according to documented studies.⁵¹

These results have occurred despite the passage of good laws. The federal Adoption Assistance and Child Welfare Act of 1980 (AACWA) was designed to address the decades old problem of foster care drift: the phenomenon of a child literally growing up in foster care.⁵² The AACWA provided fiscal incentives to states to prevent the removal of children from their homes unless necessary and to reunify them with parents or relatives as soon as possible. Adoption or other permanent living arrangements were to be found if prevention or reunification was lacking.⁵³ The AACWA required states to make "reasonable efforts" to prevent removal or to reunify through services;⁵⁴ to develop written case plans to direct the provision of services for each child;⁵⁵ to judicially or administratively review the status of each child at least every six months;⁵⁶ and to hold a permanency hearing within eighteen months of placement.⁵⁷

The promise of the AACWA was never fulfilled. The federal law's financing scheme incentivized keeping children in foster care. Lack of state funds for services, insufficient foster homes, and lax federal monitoring of state programs contributed to the problem.⁵⁸

The Adoption and Safe Families Act of 1997 (ASFA) sought to cure some of the defects of the AACWA. It makes federal reimbursement contingent on speeding up the process of cases heading towards termination of parental rights, by removing the mandate for reasonable efforts to reunify children under certain circumstances,⁵⁹ requiring permanency hearings within twelve months instead of eighteen,⁶⁰ and providing fiscal incentives to states to foster more adoptions.⁶¹ As another impetus, President Clinton issued a challenge to states to double the number of children moved from

51. Jill Chaifetz, *Listening to Foster Children in Accordance with the Law: The Failure to Serve Children in State Care*, 25 N.Y.U. REV. L. & SOC. CHANGE 1, 8 (1999).

52. See Robert M. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 MINN. L. REV. 637, 639 (1999).

53. See 42 U.S.C. § 625(a)(1) (1994).

54. § 671(a)(15) (Supp. IV 1999).

55. § 671(a)(16).

56. § 675(6).

57. § 675(5)(c).

58. Chaifetz, *supra* note 51, at 9.

59. 42 U.S.C. § 671(a)(15)(D) (Supp. IV 1999).

60. § 675(5)(c).

61. § 673(b) (West Supp. 2000).

foster care to adoption by 2002.⁶² The ASFA changes have placed enormous pressure upon child welfare agencies to improve service delivery.⁶³

Another force behind community-based care has been the influence of class action lawsuits and high profile media stories about the "failure" of the system to protect and serve children.⁶⁴ Class action lawsuits against public child welfare agencies on behalf of children have driven more than twenty states to operate under court consent decrees.⁶⁵

Florida is currently plagued with three such class action lawsuits. *M.E. v. Bush*,⁶⁶ filed in 1990, challenges the failure of the state to provide mental health services to children in state custody.⁶⁷ *Ward v. Kearney*,⁶⁸ filed in 1998, challenges unconstitutional conditions in the child welfare system in Broward County,⁶⁹ while *Foster Children v. Bush*,⁷⁰ filed in 2000, challenges such failures on a statewide basis.⁷¹ Another systemic child welfare lawsuit, *Children v. Chiles*,⁷² was settled in 1995.⁷³ In addition, a celebrated circuit court damage action, *Two Forgotten Children v. Department of Health & Rehabilitative Services*,⁷⁴ resulted in a jury award of some \$4.4 million.⁷⁵

Hardly a day goes by without media attention to the inability of Florida's child welfare system to protect children.⁷⁶ The most famous case of

62. William Eggers & Adrian Moore, *Privatization: A Growing Trend in Child Welfare*, HEARTLAND INST.: INTELL. AMMUNITION (June/July 1997), available at <http://www.heartland.org/ia/junjul97/privatization.htm>.

63. See Gordon, *supra* note 52, at 639; Mangold, *supra* note 11, at 1312.

64. CHILD WELFARE LEAGUE OF AM., *supra* note 3.

65. *Id.*

66. No. 90-1008-Civ-Moore (S.D. Fla. 1990).

67. *Id.* at 2.

68. No. 98-7137-Civ-Moreno (S.D. Fla.) (settlement approved May 31, 2000).

69. *Id.* at 2.

70. No. 00-2116-Civ-Moreno (S.D. Fla. 2000).

71. *Id.* at 3.

72. No. 90-2416-Civ-Kehoe (S.D. Fla.) (Apr. 19, 1995).

73. Memorandum Opinion in Support of the Court's Order Approving the Parties Settlement and Granting Intervention, *Children v. Chiles*, No. 90-2416-Civ-Kehoe (S.D. Fla. 1995).

74. Final Judgment at 2, *Two Forgotten Children v. Dep't of Health & Rehab Serv.*, No. 95-19835 CA2 & No. 96-5980 CA27 (Fla. 11th Cir. Ct. Oct. 22, 1999).

75. *Id.*

76. Just three months into 2000 produced the following reports in only two newspapers in Florida: Shana Gruskin, *Child Abuse Suspect Should Not Have Been Allowed Near Troubled Boy*, SUN-SENTINEL, web-posted July 19, 2000, <http://www.sun-sentinel.com>; Shana Gruskin, *Child-Welfare Workers Criticized for Defying Judge's Order on Troubled Child*, SUN-SENTINEL, web-posted Aug. 22, 2000, <http://www.sun-sentinel.com>; Shana Gruskin, *Parents of Tough Teens Say Government Help Often is Offered Too Late*, SUN-SENTINEL, web-posted July 17, 2000, <http://www.sun-sentinel.com>; Shana Gruskin, *Teen Argues State*

late has been that of Kayla McKean, whose death in 1998, after repeated reports of abuse to the state child abuse hotline, failed to prompt her removal from her parents' home, resulted in the Kayla McKean Child Protection Act of 1999.⁷⁷ Against this backdrop of documented failures, federal pressure, lawsuits, and media attention, a methodology that saves costs and improves outcomes, tested in the public health care delivery system, looks very attractive to Florida policy makers.⁷⁸

III. ATTRIBUTES OF SUCCESSFUL COMMUNITY-BASED CARE

Community-based care is not a new phenomenon in child welfare. For much of this country's history prior to the middle of the twentieth century, private agencies "championed interventions on behalf of abused and neglected children," while governments made "fledgling efforts."⁷⁹

The federal government "became financially involved through [passage of] the Social Security Act of 1935" and the creation of the Aid to Families with Dependent Children program.⁸⁰ Only with the passage of the AACWA, ASFA,⁸¹ and the Child Abuse Prevention and Treatment Act of 1974 did the federal government assume a major role in the funding of child welfare

Care Failed Him, SUN-SENTINEL, web-posted Aug. 4, 2000, <http://www.sun-sentinel.com>; Margarita Martin-Hidalgo & Ellis Berger, *13-Year-Old's Search for Life Ended in Death in Miami*, SUN-SENTINEL, Aug. 20, 2000, at 1A; Carol Marbin Miller, *Agency Probes Claim Girl, 5, Was Abused*, MIAMI HERALD (Broward), Aug. 9, 2000, at 1B; Carol Marbin Miller, *'Red Flags' Didn't Save 11-Year-Old From Abuse: Broward Case Indicated Risk*, at 1A, MIAMI HERALD (Broward), July 20, 2000; Carol Marbin Miller, *Shelter Has Reported 40 Kids Missing*, MIAMI HERALD (Broward), July 13, 2000, at 1A; Carol Marbin Miller, *Shelter Running Without License: Suicide Try Leads to Check of Facility in Oakland Park*, MIAMI HERALD (Broward), June 30, 2000, at 1A; Carol Marbin Miller, *State is Sued Again, Ripped for Failures in Foster Care*, MIAMI HERALD (Broward), June 15, 2000, at 3B; Carol Marbin Miller, *Teens Try to Help Troubled State Agency*, MIAMI HERALD (Broward), June 16, 2000, at 3B; Shannon O'Boye, *Suicidal Teen Left Hanging Because Workers Mistakenly Thought He Was Dead*, SUN-SENTINEL, web-posted July 14, 2000, <http://www.sun-sentinel.com>; Shari Rudavsky, *Lawsuit: Child Welfare System Abusive*, MIAMI HERALD (Broward), June 7, 2000, at 2B.

77. Kayla McKean Child Protection Act, ch. 99-168, 1999 Fla. Laws (amending FLA. STAT. § 39 et seq. (2000)). See Snell, *supra* note 43, Introduction.

78. See generally CHILD WELFARE LEAGUE OF AM., *supra* note 3, at 2; see Bousquet, *Faith-Based Initiative Familiar to Florida*, *supra* note 1, at 6A.

79. Susan Vivian Mangold, *Challenging the Parent-Child-State Triangle in Public Family Law: The Importance of Private Providers in the Dependency System*, 47 BUFF. L. REV. 1397, 1429 (1999); Gordon, *supra* note 52, at 642; Mangold, *supra* note 11, at 1301-11.

80. Gordon, *supra* note 52, at 642; Mangold, *supra* note 11, at 1306-07.

81. Gordon, *supra* note 52, at 642.

services through incentive payments to states.⁸² Even with increased federal funding, however, states still retain a great deal of discretion in the operation of their child welfare systems.⁸³

The lessons of the past have led to increased motivation for systemic reform. Thanks to research, it is now possible to identify attributes of successful community-based care. One of these attributes includes design and pricing; good systems ensure access to the full range of services needed and adequate funding to support service delivery and ensure quality.⁸⁴ Another attribute is quality; good systems have quality as the centerpiece and use best practices and procedural protocols that are followed.⁸⁵ Role clarity is yet another attribute; "public and private sector responsibilities must be clearly defined and delineated."⁸⁶ Outcomes are another factor to consider; good systems have "meaningful, measurable, and attainable outcome measures and performance benchmarks."⁸⁷ Management information systems should also be considered; such systems "must be capable of monitoring and evaluating critical information on an ongoing basis."⁸⁸ Finally, an inclusive planning process is important; all stakeholders must be included in the design and evaluation process.⁸⁹

The General Accounting Office (GAO), in its study of child welfare managed care initiatives around the country, reports that states and localities are meeting some of these attributes better than they did under public delivery, to the encouragement of state and local officials.⁹⁰ Child welfare systems are becoming more results oriented and performance based through outcome measures for child safety, child permanency, child and family well-being, stability, and client satisfaction for which providers are accountable.⁹¹

Initial evaluation of Florida's community-based care pilot projects established by the 1996 Legislature also demonstrated mixed results. Some improvements over the DCF run system were noted. These included: weekly in-person contact with the child in 65% of the cases, reduction of number of children per foster home to 1.6, average caseload of 18.9, average number of placements per child in the community-based system was 2.79, length of stay

82. *Id.*; Mangold, *supra* note 11, at 1308–10, 1312.

83. Gordon, *supra* note 52, at 643.

84. CHILD WELFARE LEAGUE OF AM., *supra* note 3, Overview.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. CHILD WELFARE LEAGUE OF AM., *supra* note 3, at 2.

90. GAO Statement, *supra* note 5, at 1–2.

91. *Id.*

in foster care shortened 66%, counselor turnover three or more times in only 12.8% of cases, and foster parent satisfaction in 78.9% of cases.⁹²

On the other hand, for the three pilot projects for which data is available, two of the three were not successful in meeting the following performance goals: children not re-abused during service provision, children not re-abused one year after service closure, average length of stay for children whose goal was family reunification, and reentry into foster care within one year after reunification.⁹³ Even the most successful project, the Sarasota County Coalition, failed to meet its performance goal regarding prevention of re-abuse during one year after service closure.⁹⁴ Evaluations of the Kansas privatization effort also showed mixed results on key performance measures.⁹⁵ Performance regarding lack of re-abuse improved in care and stabilization of placements, while performance on timely achievement of permanency and remaining home after reunification worsened.⁹⁶

The GAO, therefore, sounds a cautionary note. In some states, overall costs have increased.⁹⁷ Kansas, for example, experienced cost overruns of 45.2 million dollars.⁹⁸ Many state and local agencies do not have appropriate data systems in place.⁹⁹ In Florida, for example, the legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) found that monitoring focused on contract compliance instead of on the quality of services provided.¹⁰⁰ The GAO calls for increased rigorous evaluation of these managed care initiatives so that we have a true picture of their outcomes.¹⁰¹

92. Snell, *supra* note 43, at 10.

93. See generally OPPAGA Draft, *infra* note 94.

94. The Florida Legislature, Office of Program Policy Analysis and Government Accountability (OPPAGA), *Justification Review, Child Protection Program, Florida Department of Children & Families*, Report No. 01-Draft, 45-46 (Feb. 2001) [hereinafter OPPAGA Draft]; See generally OPPAGA, *Justification Review, Child Protection Program, Florida Department of Children and Families*, Report No. 01-14 (Mar. 2001). The Sarasota Coalition has since become a lead agency. OPPAGA Draft, *supra*, at 48. Among the factors in the success of this agency are the agency's already established infrastructure and experience, a "well developed and active community stakeholder group," executive leadership, the county's wealth of local resources, and a small child population. *Id.*

95. OPPAGA Draft, *supra* note 94, at 55-56.

96. *Id.* at 56.

97. GAO Statement, *supra* note 5, at 12.

98. OPPAGA Draft, *supra* note 94, at 55.

99. GAO Statement, *supra* note 5, at 2.

100. OPPAGA Draft, *supra* note 94, at 58.

101. See GAO Statement, *supra* note 5, at 2.

IV. LIMITATIONS OF COMMUNITY-BASED CARE IN FLORIDA

Florida faces considerable challenges in implementing community-based care in a way that will produce consistently positive outcomes for children and families. OPPAGA reports that DCF is experiencing difficulties in establishing lead agencies and will not meet its statutory deadline of January 2003 for statewide child welfare privatization.¹⁰² Among the barriers cited by OPPAGA are lack of capacity and experience of community-based providers to assume additional management responsibilities; reluctance to assume financial risk; and sentiment that child protection should remain a state function.¹⁰³

This section will discuss three hot spots: 1) adequate funding; 2) limitation of legal liability; and 3) preservation of appropriate state *parens patriae* roles.

A. Adequate Funding

As discussed previously, Florida's community-based care vision requires shared costs and risks with local communities.¹⁰⁴ But community-based care often costs more than traditional child welfare service delivery.¹⁰⁵ One of the attributes of successful programs is adequate funding to support service delivery and ensure quality.¹⁰⁶

While Governor Bush has committed record levels of funding for child welfare programs and the total funding for child welfare in the Executive Budget for Fiscal Year 2001–2002 is \$761 million, an eighty-seven percent increase since Governor Bush took office,¹⁰⁷ this budget must be viewed against a backdrop of years of under funding and a currently soaring child welfare population in Florida. By June 2001, the number of children in out-of-home care in Florida is expected to rise to over 18,000 children.¹⁰⁸ Cur-

102. OPPAGA Draft, *supra* note 94, at 41.

103. *Id.*

104. See COMPREHENSIVE PLAN, *supra* note 20, at 23.

105. OPPAGA Draft, *supra* note 94, at 55; GAO Statement, *supra* note 5, at 11; Carol Marbin Miller, *Private Services "Better" for Kids, But State Strategy Could Get Costly, Early Figures Show*, MIAMI HERALD (Broward), Mar. 1, 2001, at 1A. DCF expects Community Alliances to share ownership and responsibility for resource development. REPORT, *supra* note 2, at 25.

106. See REPORT, *supra* note 2, at 16.

107. Florida's e-Budget, Health and Human Services, at <http://www.ebudget.state.fl.us/priorities/ebudgethealthandhumanservices.asp> (last visited Jan. 17, 2001).

108. FLA. DEP'T OF CHILDREN & FAMILIES., FAMILY SAFETY, LEGISLATIVE BUDGET REQUEST 2000–2001.

rently there are approximately 12,164 children in out-of-home care;¹⁰⁹ in mid 1997, there were 9045.¹¹⁰ The DCF admits that this huge growth has resulted in insufficient foster homes to meet the demand, resulting in overcrowded conditions with children and staff staying in motels, children placed at serious risk of harm, unrealistic expectations for care and supervision by foster parents, rapid turnover, and failure in meeting statutory expectations for permanency within twelve months.¹¹¹

OPPAGA lists financial risk as one of the obstacles to successful implementation of community-based care in Florida,¹¹² a finding that is not surprising. Providers worry that the state will not give them the resources to do the job right and that community-based care is just another under funded state mandate.¹¹³

One measure of anxiety centers around the availability of a "Risk Pool" to protect lead agencies from the risks of uncompensated growth due to unexpected caseload increases, legislative and policy changes, and media awareness. Under a state-run child welfare system, the DCF had the ability to transfer funds from other programs or districts to address costs associated with these risks, a remedy no longer available under community based care. The Florida Legislature set aside \$4.5 million in budget authority for a "Risk Pool" in the fiscal year 2000–2001,¹¹⁴ a minuscule amount compared to DCF's projected 2002 child welfare budget of \$761 million and the projected growth of numbers of children in out-of-home care.¹¹⁵ No administrative rules have been promulgated to allow providers to access even these limited "Risk Pool" funds.

Adding to the apprehension is the language of the Statement of Assurances contained in the proposed DCF contracts with lead agencies. Applicants must agree to "ensure continuity of care from entry to exit for all

109. FLA. DEP'T OF CHILDREN & FAMILIES, FAMILY SAFETY, SUBSTITUTE CARE REPORT (July 2000–Sept. 2000).

110. FLA. DEP'T OF CHILDREN & FAMILIES, FAMILY SAFETY AND PRESERVATION, MANAGEMENT PLAN SUMMARY (July 1997).

111. See generally REPORT, *supra* note 2.

112. See OPPAGA Draft, *supra* note 94, at 41. This consternation might be expressed by existing agencies not showing interest in serving as a lead agency; lack of capacity to serve as lead agency; or demands for more resources. REPORT, *supra* note 2, at 17–18.

113. Shana Gruskin, *Two Agencies Team Up To Bolster Foster Care in Palm Beach County*, SUN-SENTINEL, web-posted Dec. 11, 2000, <http://www.sun-sentinel.com>. One fiscal advantage of community-based care is that private agencies can earn Medicaid dollars at a higher rate than can the state. The Sarasota Coalition, for example, earns \$1 million in Medicaid billings to supplement its \$14 million in DCF funding. Miller, *supra* note 105, at 2A.

114. REPORT, *supra* note 2, at 18.

115. See generally OPPAGA Draft, *supra* note 94.

children referred" and "serve all children referred, regardless of the level of funding allocated by the State of Florida."¹¹⁶ The Statement of Assurances omits the clear language of statutory law containing the clarifier, "provided all related funding is transferred."¹¹⁷ Community-based agencies understandably see this contract clause as an administrative abdication.¹¹⁸

Illustrative of the depth of community misgivings about the ultimate success of community-based care, is the analysis of a prospective lead agency in Miami-Dade County, which claims that DCF's new direction has thrown the foster care system into crisis. It says:

The cost of recruiting, training services, and supporting foster homes, while creating an infrastructure to provide services properly without adequate financial support, has threatened the viability of the privatization movement in Miami-Dade County. In turn, this has placed a great strain and created apprehension among the corporations, foundations, and community partners that have already joined the effort.¹¹⁹

This agency's Supported Foster Care Program costs \$28 a day per child.¹²⁰ Although the initial reimbursement rate provided by the state for two years was \$20 a day, DCF now provides \$15.66 per day, leaving the agency to make up \$12.32 a day through private funds.¹²¹ This is in contrast to the \$36 that Florida spends on receiving, screening, and referring just one call to the Child Abuse Hotline.¹²²

Cost issues have already spawned litigation in Florida. The Lake County Boys Ranch, a privatized lead agency, has sued DCF for injunctive relief and damages after DCF notified the Ranch that the state agency would

116. CHILDREN'S HOME SOC'Y, APPENDIX XII, STATEMENT OF ASSURANCES, 86-87.

117. See FLA. STAT. § 409.1671(1)(b)(5) (1998).

118. Interview with Kathryn O'Day, Vice-President for Program Development and Evaluation, Children's Home Society (Feb. 14, 2001).

119. CHARLEE HOMES FOR CHILDREN, FOSTER CARE CRISIS 1.

120. Jacqueline Charles, *Funding Puts Pressure on Foster-Care Agencies*, MIAMI HERALD, Jan. 2, 2001 at 1B.

121. *Id.* The Children's Home Society receives \$15.00 per day. Charles, *supra* note 120, at 1B, citing DCF's need to divert the money to create new programs and increase the number of children in others. In contrast, Florida provides \$23.83 for care of an adult in an assisted living facility, a rate also deemed woefully inadequate. Carol Marbin Miller, *Crisis of Care for Florida's Mentally Ill*, MIAMI HERALD (Broward), Feb. 11, 2001, 1A.

122. OPPAGA Draft, *supra* note 94, at 9.

take over all child welfare functions by December 31, 1999.¹²³ The suit alleges, inter alia, failure of the state to protect children, failure to allocate sufficient funds, failure to follow the statute, contract breaches, negligence, fraudulent misrepresentation, fraudulent concealment, and defamation.¹²⁴ The agency had originally contracted to care for all new children entering state care each month, a number that averaged twelve children per month. After the death of Kayla McKean,¹²⁵ the number of new cases each month exceeded 100, with sometimes as many as 170. When the Ranch first signed its contract, there were 200 children in care in Lake County; when the lawsuit was filed, there were 1500. The Ranch was providing care for fifty percent of DCF's children, while receiving only thirty percent of funds allocated.¹²⁶ The lawsuit is now on appeal.¹²⁷

Resource issues need to be squarely resolved by DCF. Without resolution, communities will either decline to step up to the plate, will be unable to meet quality performance measures, or will embroil the state in mounds of litigation.

B. *Limitation of Legal Liability*

Closely linked to the above discussion is the question of legal liability. While the state retains legal responsibility for children in its care, and sovereign immunity is waived for negligence in the performance of operational level activities of DCF caseworkers,¹²⁸ a statutory cap limits the state's

123. Petition, *Lake County Boys Ranch v. Kearney*, No. 00-3055, (Fla. 5th Jud. Cir., Lake County, FL) (Sept. 20, 1999), appeal pending, No. 99-2413 CA, (Fla. 5th Dist. Ct. App.).

124. *Id.*

125. See Snell, *supra* note 43, at 4.

126. *Lake County Boys Ranch*, No. 00-3055, at 12.

127. *Id.* In addition, officials of the Ranch were indicted in April 2000 for Medicaid fraud and grand theft for over-billing, double billing, and fraud in their billing practices. OPPAGA Draft, *supra* note 94, at 48.

128. See *Dep't of Health & Rehab. Servs. v. Yamuni*, 529 So. 2d 258 (Fla. 1988) (calling actions of caseworkers investigating and responding to reports of child abuse operational level activities and legally actionable); *Dep't of Health and Rehab. Servs. v. Whaley*, 574 So. 2d 100 (Fla. 1991) (calling the care of youth in detention an operational level activity and legally actionable). But see *Dep't of Health and Rehab. Servs. v. B.J.M.*, 627 So. 2d 512 (Fla. 1993) (holding that decisions about where to place a child and the kind of services to give them are planning level activities and not actionable); *Lee v. Dep't of Health & Rehab. Servs.*, 698 So. 2d 1194 (Fla. 1997) (holding that decisions about staffing and staffing levels are planning activities and not actionable).

financial risk.¹²⁹ Private providers, on the other hand, do not have sovereign immunity and can be held legally responsible for negligence in the delivery of their services.¹³⁰

In the 1999 Florida Legislature, private providers attempted to secure passage of a law to make any community agency that delivers foster care and related services under contract with DCF an instrumentality of the state and, thus, subject to the same statutory damage cap as the Department.¹³¹ They feared that one or two major jury verdicts for children would drive them out of business. But some legislators were leery of opening the door to nonchild welfare corporations doing business with the state and worried that such a provision might reduce accountability among private providers and encourage the same indifferent services that led to child welfare tragedies.¹³²

The 1999 Legislature required lead agencies and subcontractors to acquire a liability insurance policy of at least \$1 million dollars per claim and \$3 million per incident. The outcome was that the legislature also limited economic damages (past and future medical expenses, wage loss, and loss of earning capacity) to \$1 million and noneconomic damages (pain and suffering) to \$200,000 per claim.¹³³ Community-based care providers secured some degree of lessened liability, but certainly liability remains of great concern in the decision to enter into contracts with the state.¹³⁴

C. *Preservation of Appropriate State Parens Patriae Role*

Another attribute of successful community-based care is role clarity. Not only does Florida law and practice fail to clearly delineate the role of the state versus the role of communities in its "partnership," the very nature of the "partnership" described in Florida law¹³⁵ may run afoul of state *parens patriae* and police powers to protect children. Implicit in the state's desire to "share costs and risks" is the desire to diminish the state's liability. This, however, may not be legally possible.

129. The cap is \$100,000 per incident of negligence and \$200,000 total per victim. FLA. STAT. § 768.28(5) (1999). A successful litigant would have to seek a special claims bill from the legislature to exceed the statutory cap. *Id.*

130. The United States Supreme Court, in *Richardson v. McKnight*, 521 U.S. 399 (1997), held that private persons performing governmental functions are not entitled to qualified immunity. *Id.* at 402.

131. THE FLORIDA LEGISLATURE, *supra* note 10, at 2.

132. See John D. McKinnon, *Question of Liability Limit Clouds Future of Privatized Child Welfare*, WALL ST. J., Mar. 17, 1999, at F1.

133. FLA. STAT. § 409.1671(1)(f) (2000).

134. Interview with Kathryn O'Day, *supra* note 118.

135. See generally COMPREHENSIVE PLAN, *supra* note 20, at 5.

The state may constitutionally delegate "functions" that are traditionally performed by the government to a private entity, but it may not delegate governmental "power."¹³⁶ A private entity exercises governmental power whenever it deprives a person of life, liberty, or property under government directive,¹³⁷ giving rise to a claim of "state action." Under the "state action" theory, the state retains responsibility to protect the constitutional rights of the children and families over whom community-based care providers exercise control because the responsibility is nondelegable.¹³⁸

The nondelegation doctrine is particularly applicable to the child welfare system for reasons other than the "state action" theory. The state is prohibited from interfering in family life except to protect children¹³⁹ because of: the state's constitutional police powers; and the state's common law *parens patriae* responsibilities.¹⁴⁰

Historically the care and protection of children was the prerogative of the crown,¹⁴¹ a prerogative which devolved upon the state, as sovereign, for example, the *parens patriae*.¹⁴² *Parens patriae* responsibilities are vested only in the state and are the basis for state laws which protect children.¹⁴³ These powers cannot be surrendered, bargained, or contracted away.¹⁴⁴

In the community-based care context, the state can lawfully delegate the performance of state "functions," such as the delivery of shelter care, foster care, adoption, and other services to private providers, but it must retain the

136. See David M. Lawrence, *Private Exercise of Governmental Power*, 61 IND. L.J. 647 (1986); Ira P. Robbins, *The Impact of the Delegation Doctrine on Prison Privatization*, 35 UCLA L. REV. 911, 930-31 (1988); Joseph E. Field, Note, *Making Prisons Private: An Improper Delegation of a Governmental Power*, 15 HOFSTRA L. REV. 649, 668 (1987).

137. Robbins, *supra* note 136, at 931.

138. *Ancata v. Prison Health Servs.*, 769 F.2d 700, 703 (11th Cir. 1985). See Robbins, *supra* note 136, at 931; Field, *supra* note 120, at 669.

139. See *Santosky v. Kramer*, 455 U.S. 745, 766 (1982).

140. See *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

141. 3 WILLIAM BLACKSTONE, COMMENTARIES 426-27.

142. *Fontain v. Ravenel*, 58 U.S. 369, 384 (1854). See *Wilhelm v. Spokane Cmty. Mental Health Ctr.*, 726 P.2d 479, 483-84 (Wash. Ct. App. 1986) (McInturff, J., concurring) (discussing the roots of the *parens patriae* doctrine).

143. See *In re Beverly*, 342 So. 2d 481, 485 (Fla. 1977). The Third District Court of Appeal in *Simms v. Dep't of Health & Rehab. Servs.*, 641 So. 2d 957, 960-61 (Fla. 3d Dist. Ct. App. 1994) recognized that two branches of government, the courts and the executive branch, can simultaneously exercise protective powers over children but did not reach the question of sharing power with private entities.

144. *Florida Power Corp. v. Pinellas Util. Bd.*, 40 So. 2d 350, 356 (Fla. 1949); 10 FLA. JUR. 2D *Constitutional Law* § 203 (1997).

“power” and duty to protect children assigned to these services.¹⁴⁵ The state cannot delegate the removal of children from their homes to a non-governmental actor. Nor can the state delegate its ultimate responsibility for children once they are in state custody and deprived of their liberty. The logical implication of this analysis is that the state cannot require private providers to assume the costs and risks of fulfilling governmental obligations. The state can ask the community for assistance, but ultimately the state remains responsible for the adequacy of resources, caseload sizes, and the quality of services provided.¹⁴⁶

Practically speaking, then, the state is responsible for the costs of delivery of services in a community-based care environment, costs which are inevitably greater than in a completely state-run system.¹⁴⁷ The state must maintain oversight and monitoring responsibilities over the child welfare system, including the obligation to represent the agency in juvenile dependency proceedings. On top of that fiscal obligation, the state must pay for a child’s daily care and associated services delivered by community providers.

V. RECOMMENDATIONS AND CONCLUSION

Some say that privatization represents an abdication of the state’s responsibility to promote the general welfare of its citizenry.¹⁴⁸ On the other hand, because of its unique ability to foster meaningful, measurable and attainable outcome measures and performance standards, child welfare privatization represents one of the best strategies to date to cure the historic and current ills of the child welfare system.

Will Florida innovate or abdicate? In order to innovate, Florida must be true to the attributes of successful community-based care. This article has revealed that Florida is struggling to achieve at least two of those attributes: appropriate pricing and role clarity.

145. See FLA. STAT. § 39.521(1)(f)(5) (2000), which does not alter the requirement for placing legal custody of dependent children with DCF, not with a private agency; OPPAGA Draft, *supra* note 94, at 58.

146. Some argue that the non-delegation doctrine has been for all practical purposes discredited, but it still holds firm in instances where the power delegated was never lawfully delegable. See *A.A. v. State*, 605 So. 2d 106, 108 (Fla. 1st Dist. Ct. App. 1992) (Ervin, J., concurring) (citing *Chiles v. Children A–F*, 589 So. 2d 260, 265–66 (Fla. 1991) for an excellent summary of these points).

147. For example, sheriffs’ offices now conducting child protective investigations spend \$654 per investigation, which is \$183 more than DCF’s average cost per investigation of \$471. Miller, *supra* note 105, at 2A.

148. See OPPAGA Draft, *supra* note 94; *Chiles v. Children A–F*, 589 So. 2d 260, 267 (Fla. 1991) (agreeing that exercising powers that are not capable of delegation is an exercise in abdication of responsibility); see also Field, *supra* note 136, at 668–69.

If Florida will successfully innovate, it must accomplish the following reforms: clearly establish in law that, while community partnerships are beneficial, the ultimate responsibility for the welfare of dependent children lies with the state, i.e. the state is the lead or primary partner in community-based care; reinstate the prescribed duties of DCF and those its Secretary recently abolished, i.e. the duty to actually provide services, the duty to prevent or remedy the neglect, abuse, or exploitation of children, and the duty to aid in the preservation, rehabilitation, and reuniting of families; clearly establish in law that the ultimate fiscal responsibility for dependent children lies with the state, by enacting similar language to that which the legislature used in 2000 absolved local governments of responsibility, for example, the legislature does not intend by its privatization of foster care and related services that any private provider of child welfare services be required to assist in funding programs previously funded by the state;¹⁴⁹ fund an adequate financial "Risk Pool" for community-based care; remove language from community-based agency contracts that negate the clear language of Florida law that requires the transfer of all appropriate state funds; appropriate sufficient funds to allow DCF to exercise its oversight and monitoring obligations while enabling community-based providers to succeed in daily care responsibilities; reduce the statutorily prescribed legal liability of private providers to an acceptable level.

The future of Florida's children is in the hands of Florida's elected officials. Rafts of litigation and media attention are poor substitutes for informed public policy and skilled public policy implementation. The path to innovation is clear, but unfortunately the spectrum of government abdication also lurks ominously on Florida's horizon.

149. FLA. STAT. § 409.1671(1)(a) (2000).